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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARD LEYVA,

Defendant.

2:05-CR-165 JCM (GWF)

**ORDER**

Presently before the court is *pro se* defendant Bernard Leyva's motion to modify judgment. (Doc. # 106). The government has filed a response in opposition. (Doc. # 107).

Pursuant to his guilty plea, the defendant was sentenced to 168 months imprisonment followed by five years supervised release for conspiracy to possess with intent to distribute a controlled substance and aiding and abetting, in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A)(viii) and 18 U.S.C. § 2. (*See* doc. # 82).

The defendant now moves the court to reduce his sentence, alleging that "on April 1, 2014, the United States Sentencing Commission voted to allow convicted drug offenders to reduction [sic] of sentence to alleviate prison overcrowded population [sic]." (Doc. # 106, p. 2). The defendant further asserts that, to best of his knowledge, the amendment applies retroactively and, as a result, he is entitled to have his sentence reduced.

As noted by the government, no amendment to the sentencing guidelines took effect on April 1, 2014. Rather, the Sentencing Commission has submitted to Congress amendments to the guidelines which would lower the ranges pertaining to certain drug offenses. However, the

1 amendment is not yet in effect, and it is unclear if, and how, the amendment would apply  
2 retroactively.<sup>1</sup>

3 In short, defendant's motion is premature and will be denied without prejudice.

4 Accordingly,

5 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion to  
6 modify judgment (doc. # 106) be, and the same hereby is, DENIED without prejudice.

7 DATED May 22, 2014.

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10 **UNITED STATES DISTRICT JUDGE**

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27 <sup>1</sup> The amendments will become effective on November 1, 2014, unless Congress acts to the contrary. However,  
28 issues regarding retroactivity are currently open to public comment and remain unresolved. See  
[http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140430\\_RF\\_Proposed\\_Amendments.pdf](http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140430_RF_Proposed_Amendments.pdf)